

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOHN J. BENYI,

-v-

3:20-CV-1463

NEW YORK *et al.*,

Defendants.

APPEARANCES:

JOHN J. BENYI
Plaintiff, Pro Se
76480
Lea County Correctional Facility
6900 West Millen
Hobbs, NM 88244

OF COUNSEL:

DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

Pro se plaintiff John J. Benyi (“plaintiff”) filed this civil rights action against, *inter alia*, various state and local law enforcement officials alleging that his rights were violated in connection with a criminal proceeding in state court. Plaintiff also sought leave to proceed *in forma pauperis*.

On March 23, 2021, following an initial review of plaintiff’s complaint, U.S. Magistrate Judge Miroslav Lovric denied plaintiff’s *in forma pauperis* application without prejudice. Judge Lovric further advised by Report &

Recommendation (“R&R”) that plaintiff’s complaint be dismissed with prejudice as to his (1) claims pursuant to 42 U.S.C. § 1983 against Defendants New York, Binghamton Police Department, Broome County Sheriff’s Department, New York State Appellate Division Third Department, United States District Court for the Northern District of New York, and Second Circuit Court of Appeals; and (2) claims pursuant to 42 U.S.C. § 1997 for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b).

However, Judge Lovric’s R&R advised that plaintiff’s complaint be dismissed *without prejudice* as to his (1) claims pursuant to 42 U.S.C. § 1983 against Defendants Angel and Guyyey; and (2) claims pursuant to the ADA, for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b).

No objections have been filed. Upon review for clear error, the Report & Recommendation is accepted and adopted in all respects. *See* FED. R. CIV. P. 72(b).

Therefore, it is

ORDERED that

1. The Report & Recommendation is ADOPTED;
2. The following claims are DISMISSED WITH PREJUDICE: (1) claims pursuant to 42 U.S.C. § 1983 against Defendants New York, Binghamton

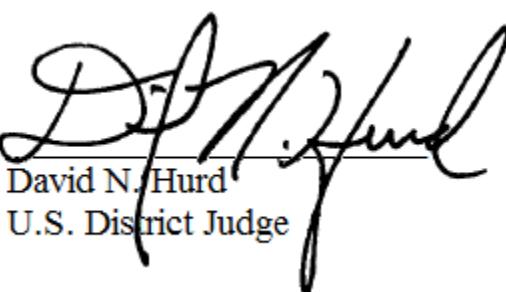
Police Department, Broome County Sheriff's Department, New York State Appellate Division Third Department, United States District Court for the Northern District of New York, and Second Circuit Court of Appeals; and (2) claims pursuant to 42 U.S.C. § 1997 for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b);

3. The following claims are DISMISSED WITHOUT PREJUDICE: (1) claims pursuant to 42 U.S.C. § 1983 against Defendants Angel and Guysey; and (2) claims pursuant to the ADA, for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b); and

4. The Clerk of the Court shall serve a copy of this Order on plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: April 13, 2021
Utica, New York.



David N. Hurd
U.S. District Judge